

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA J. MASUCH,

Plaintiff-Appellant,

v

GMRI, INC.,

Defendant-Appellee.

UNPUBLISHED

May 15, 2001

No. 222083

Genesee Circuit Court

LC No. 98-064086-NI

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order dismissing the case with prejudice. We decide this appeal without oral argument pursuant to MCR 7.214(E). We reverse and remand.

Plaintiff filed the instant action on October 27, 1998. On May 3, 1999, her attorney filed a motion to withdraw. At the hearing on May 17, 1999, the trial court granted the motion and instructed the withdrawing attorney to prepare an order stating that plaintiff's action would be dismissed unless she retained substitute counsel by June 28, 1999. The order entered by the trial court on May 26, 1999, contained that requirement and did not provide plaintiff the option of proceeding in propria persona. Defendant subsequently filed a motion to dismiss on the ground that plaintiff did not comply with the court's order because she did not retain a new attorney by the deadline. Although plaintiff was represented by counsel at the hearing on the motion to dismiss, the trial court granted the motion and dismissed plaintiff's case with prejudice.

The record does not clearly reveal the grounds on which the trial court relied when it dismissed plaintiff's case. The trial court may have relied on MCR 2.504, dismissing the case because plaintiff failed to comply with the court's May 26, 1999, order regarding substitute counsel. The trial court may have relied on MCR 2.502, dismissing the case for lack of progress. Finally, the trial court may have relied on MCR 2.313, dismissing the case as a sanction for plaintiff's failure to provide discovery. Regardless of the specific grounds for the trial court's decision, we conclude that the court committed error requiring reversal when it dismissed plaintiff's case with prejudice.

To the extent that the trial court relied on MCR 2.504(B)(1), dismissing the case because plaintiff failed to comply with the May 26, 1999, order regarding substitute counsel, the trial

court erred. Once plaintiff's counsel withdrew from the action, plaintiff was without counsel and thus had the right to represent herself. MCL 600.1430; MSA 27A.1430. The court could not compel her to proceed only with counsel absent a finding that she was a minor, incompetent, or otherwise incapable of representing herself. *Id.* Therefore, the court could not dismiss the case simply because plaintiff was without counsel. The court apparently recognized this fact at the hearing on the motion to dismiss. Nevertheless, the court dismissed the case, stating that plaintiff "hasn't proceeded in any event."

To the extent that the court dismissed the case for lack of progress pursuant to MCR 2.502, we review the court's ruling for an abuse of discretion. *Sand v General Motors Corp*, 155 Mich App 330, 331; 399 NW2d 510 (1986). We conclude that dismissal for lack of progress would have been improper in this case because the court did not provide plaintiff with the requisite notice of an intent to dismiss. MCR 2.502(A)(1); *Laidler v Nat'l Bank of Detroit*, 133 Mich App 85, 93; 348 NW2d 42 (1984).

To the extent that the court relied on MCR 2.313, dismissing the case as a sanction for plaintiff's failure to provide discovery, we review the court's ruling for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). Although the plaintiff apparently failed to file a witness list as directed by the pretrial order and apparently failed to provide discovery, the sanction of dismissal should only be imposed for the most egregious violations of the court rules. *Schell v Baker Furniture Co*, 232 Mich App 470, 477; 591 NW2d 349 (1998), *aff'd* 461 Mich 502 (2000). Dismissal should be ordered only after the court determines on the record that such a severe sanction is just and proper under all the facts and circumstances of the case. *Bass, supra* at 26-27; *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990). Because the trial court did not explain its reasons for dismissing plaintiff's case, we are unable to determine whether the court weighed the proper factors or whether the court considered any sanctions other than dismissal. Accordingly, we conclude that the court abused its discretion in dismissing the case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly